

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)	
Ozark Energy Partners, LLC)	
for a Certificate of Public Convenience and)	
Necessity to Construct and Operate an)	Case No. GA-2006-0561
Intrastate Natural Gas Pipeline and Gas Utility)	
to Serve Portions of the Missouri Counties of)	
Christian, Stone and Taney, and for)	
Establishment of Utility Rates.)	

**RESPONSE OF OZARK ENERGY PARTNERS TO SMNG'S APPLICATION
FOR RECONSIDERATION AND/OR REHEARING**

COMES NOW Ozark Energy Partners, LLC, ("Ozark" or "OEP"), the Applicant in this case, and submits its Response to *Southern Missouri Gas' Application for Reconsideration and/or Rehearing*, filed in this case on February 14, 2008.

The Commission issued its Report and Order in this case on February 5, 2008, effective February 15, 2008. On February 14, 2008, SMNG filed *Southern Missouri Gas' Application for Reconsideration and/or Rehearing*.

SMNG's Application for Reconsideration and/or Rehearing should be denied by the Commission because it merely restates the positions it espoused at the hearing, which the Commission has already heard, considered and rejected. SMNG simply rehashes issues that have been tried, briefed and decided, stating no new evidence or argument that could compel a different result. The Commission should find that SMNG has failed to establish sufficient reason to grant its Application for Reconsideration and Rehearing in this case.

SMNG's Application for Reconsideration and/or Rehearing sets out three issues which it describes as "Issues on Which Reconsideration and Rehearing Are Sought." (At page 2.) Each of those issues is addressed below.

A. OEP Qualifications

SMNG alleges that the Commission's finding that OEP satisfies the criteria of being qualified to provide the proposed service on page 6 of the Report and Order is not based upon competent and substantial evidence in the record and is not supported with adequate findings of fact. SMNG is wrong on both counts.

SMNG argues that the Commission's findings concerning the qualifications of Mr. Randy Hole and Mr. Ralph Handlin, on page 5 of the Report and Order, are not based upon competent and substantial evidence in the record and are based only upon the "hearsay" testimony of Mr. Epps. (SMNG Application for Rehearing, at pp. 2-3.) SMNG's allegation is absolutely wrong. First of all, the resumes of both Mr. Hole and Mr. Handlin are contained in OEP's Feasibility Study and have been a matter of public record in this case since February 28, 2007, when that Study was filed. They are also in evidence in this case. See, Exhibit 27 HC, Exhibit 28 NP, at pages 54-55. Mr. Epps' knowledge of both Mr. Hole and Mr. Handlin is personal and extensive, and his testimony concerning their experience and expertise is not hearsay but based upon his personal knowledge and corroborated by their resumes. Nor was Mr. Epps' testimony concerning Mr. Hole or Mr. Handlin objected to at hearing as "hearsay," or on any other basis. (T-164, l. 14 – T-165, l. 6.) No evidence was offered or even suggested by SMNG which would rebut the qualifications and

expertise of Mr. Hole and Mr. Handlin. Thus, contrary to SMNG's assertions after the fact, the Commission's findings concerning the qualifications of Mr. Hole and Mr. Handlin are supported by competent and substantial, and uncontroverted, evidence in the record.

SMNG's challenge of the Commission's findings concerning Steven Cattron, Greg Pollard and Dan Epps are equally flawed. (SMNG Application, at pages 3-4.) **Each of SMNG's arguments was raised at hearing or in its brief, and nothing new has been presented by SMNG in its Application for Reconsideration and/or Rehearing.** The expertise and qualifications of Messrs. Cattron and Pollard are unchallenged in the record. Their availability to assist OEP in bringing the right people to the table to manage the company is one of the elements, though not the only element, of OEP's qualifications to provide the proposed service.

In its Application, SMNG continues its ploy of providing a laundry-list of college degrees or business experience that Mr. Epps does not possess as "evidence" that OEP, as a company, lacks qualifications to provide the proposed service. Mr. Epps' personal and professional qualifications were clearly established in the record. *See, Brief of Ozark Energy Partners, LLC*, filed January 8, 2008, at pages 5-6, and citations to the record therein. One of OEP's strengths is its ability to assemble a team of highly-qualified experts and professionals to accomplish the task of providing the proposed service. (OEP Brief, at p. 9; T-159, ll. 16-20; T-180, ll. 7-15.) Mr. Cattron, former President of Missouri Gas Energy, the second-largest natural gas utility in Missouri, testified

that, based on his own experience, it is not essential to have already been in an industry in order to achieve success in that industry but, rather, it is important to surround oneself with a quality team to ensure success. (T-105, l. 25 – T-106, l. 4.)

Further, there is clearly no requirement under Missouri law that each owner, partner or shareholder of a public utility must be educationally and experientially qualified to personally manage each aspect of the company's operations. (See, *OEP Brief*, at page 10.) The totality of OEP's qualifications to provide the proposed service is discussed in detail in OEP's Brief, at pages 5-10. The record clearly supports the Commission's findings in its Report and Order, and SMNG has raised nothing new in its Application for Reconsideration and/or Rehearing that would require the Commission to either reconsider or rehear the issue of OEP's qualifications to provide the proposed service.

SMNG also argues that the condition placed by the Commission on OEP's certificate, requiring that OEP's Annual Reports to the Commission include "information pertaining to the expertise of its management" (ORDERED: 2), "does not adequately or reasonably address the Commission's stated concern with OEP's existing management level." (SMNG Application, pages 4-5.) SMNG's argument is without merit. The Commission has broad and extensive oversight authority over public utilities, and is well-positioned and experienced to monitor OEP's management quality. OEP has agreed to numerous conditions in its Stipulation and Agreement with Staff, and the Commission has ordered that those conditions apply to OEP as part of its conditional certificate herein.

(ORDERED: 4.)¹ SMNG's argument in this regard is simply a rehash of its self-serving position that OEP lacks the qualifications to provide the proposed service, fully rebutted above. Again, nothing new has been presented by SMNG in its Application to warrant rehearing or reconsideration by the Commission of this issue.

B. Branson Franchise

SMNG also argues that the Commission's grant of a conditional certificate to serve the City of Branson is not reasonable since OEP has no municipal franchise to serve Branson at the present time, and has no plans to serve Branson in the immediate future. (SMNG Application, pages 5-6.)

OEP's business strategy was clearly explained in testimony, and is discussed thoroughly in OEP's Brief at pages 18-24. OEP's approach to serving the City of Branson is also discussed in OEP's Brief at pages 44-46. As stated there, at page 46: "OEP has held meetings with Branson city officials and determined that, once OEP is operating its system, it will seek a franchise from the city at the earliest reasonable opportunity. As stated by Mr. Cattron, OEP sees Branson as an important community in the future. (T-97, ll. 1-2.)" No new evidence or argument concerning this issue has been raised by SMNG in its Application for Reconsideration and/or Rehearing.

¹ OEP has requested relief from only one of those conditions, in its *Application of Ozark Energy Partners, LLC for Rehearing, Reconsideration and Clarification*, filed on February 14, 2008 in this case. That condition does not relate to management qualifications or performance, and is one that the Commission itself determined to be "neither reasonable nor necessary" as to SMNG in Case No. GA-2007-0168.

Under the conditional certificate granted to OEP in this case, OEP may not provide service within Branson until it has obtained a municipal franchise from the City of Branson. The same condition applies to providing service within Branson West. See, Stipulation and Agreement, Section D. 7., at pages 4-5. SMNG has requested clarification in GA-2007-0168 that its condition as to serving Branson West is likewise framed, a clarification to which OEP has not objected. Thus, SMNG is in the same position, in Case No. GA-2007-0168, as to Branson West in regard to a municipal franchise as OEP is as to Branson in the instant case.

SMNG's suggestion that OEP has failed to meet the requirements of 4 CSR 240-3.205(1)(A)(5) in its Feasibility Study is disingenuous, if not outright laughable, given the failure of its own feasibility study in GA-2007-0168 to provide *any* meaningful Branson-specific information (except for significant underestimates of capital costs). The record evidence is competent and substantial as to the foundations and process of the OEP Feasibility Study. See, *OEP Brief*, pages 18-24, and evidence cited therein.

C. Adequacy of Supply Plan and Feasibility Study

Finally, SMNG argues that the Commission's Report and Order is unlawful and unreasonable because it allegedly failed to address specific issues raised in the proceeding concerning the adequacy of OEP's supply plan and feasibility study. Once again, no new evidence or argument is offered or suggested by SMNG in its Application for Reconsideration and/or Rehearing. The record is replete with competent and substantial evidence supporting both OEP's supply

plan and its feasibility study. *See, Brief of Ozark Energy Partners, LLC*, at pages 14-43, including specific and extensive discussion of the safety and reliability of OEP's supply plan at pages 29-38. The Stipulation and Agreement includes numerous provisions, upon which the Commission has conditioned OEP's certificate, concerning the safety and reliability of the OEP supply plan.

In any event, the Commission in its Report and Order reserved its ultimate findings concerning economic feasibility for the financing phase of this proceeding. (Report and Order, page 7.) Thus, SMNG's request for reconsideration or rehearing is, at best, premature.

Conclusion

Section 386.500.1, RSMo, provides that the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefore shall be made to appear." SMNG's Application for Reconsideration and Rehearing merely restates the positions it espoused at the hearing, which the Commission has already heard, considered and rejected. The Commission should find that SMNG has failed to establish sufficient reason to grant its Application for Reconsideration and Rehearing in this case.

WHEREFORE, Ozark Energy Partners, LLC, respectfully requests that the Commission deny Southern Missouri Natural Gas' Application for Reconsideration and/or Rehearing in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served electronically on the General Counsel's Office, the Office of the Public Counsel, and counsel for each party of record, on this 22nd day of February 2008.

/s/ William D. Steinmeier

William D. Steinmeier